IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 134 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARANBHAI L RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR DHARMESH SHAH for MR DP KINARIWALA for Petitioner

MR KT DAVE, APP for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. Sub Divisional Magistrate, Bhavnagar, issued a notice under section 59 of the Bombay Police Act ("the Act" for short) on the externee-Karanbhai Lavjibhai Rajput, calling upon him to show cause as to why he should not be externed from Bhavnagar as well as from the contiguous districts in order to prevent him from pursuing his

nefarious activities. The Sub-Divisional Magistrate also referred to 4 offences registered against the externee. After conducting an inquiry (externment proceedings) in light of the reply given by the externee and on the basis of the material produced, the Sub - Divisional magistrate passed an order on November 19, 1999 in exercise of powers under section 56(b) of the Act, externing Karanbhai Lavjibhai Rajput for a period of two years from the areas of districts of Bhavnagar, Ahmedabad, Surendranagar, Junagadh, Rajkot and Amreli.

#. The said order was carried in appeal contemplated under section 60 of the Bombay Police Act and that also came to be rejected by an order dated 21st January, 2000. The petitioner therefore, challenges the order of externment as well as the order of appellate authority on various grounds. Mr. Dharmesh Shah, learned advocate, appearing for the petitioner has restricted his arguments to the fact that the externing authority has not assigned any reasons for externing the externee from contiguous districts. He also submitted that out of four registered offences, two offences had been filed under Chapters XII, XVI and XVII of the Indian Penal Code. They are CR Nos. 195/98 and 54/99. According to Mr. Shah therefore, there is non-application of mind on the part of the externing authority.

#. The petition is opposed to by Mr. K.T. Dave, learned APP.

#. Having regard to the rival side contentions, there is substance in the contention raised by Mr. Shah on behalf of the externee. Plain reading of the order of externment indicates that the externing authority has not assigned any reasons for externing the externee. from contiguous districts. Even in the notice under section 59 of the Act, what is stated is that it is proposed to extern the petitioner from contiguous districts as he may operate from those districts in these days of speedy transport. To that, reason is missing so far as the order is concerned and in the absence of any such reasoning, externing the externee from the contiguous districts is bad and the order, therefore, cannot be sustained. In this regard, the decisions in the case of Mustafamiya Pirsahedmiya Saiyed v. State of Gujarat and anr., 1999 (1) GLH 913 and in the case of Sandhi Mamad Kala v. State of Gujarat, 14 GLR 384, may be taken into consideration.

#. In view of the above discussion, the petition deserves to be allowed. The same is allowed. The impugned

orders of externment dated November 11, 1999 as also the appellate order dated January 21, 2000 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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